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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 14.03.2023

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CM(M) 407/2023 & C.M. APPL. 12077-12078/2023

DR.A.P SINGH

..... Petitioner

versus

DR. KAMAL MITRA CHENOY & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vikas Singh, Sr. Adv. with Mr. Arpit Bhalla and Mr. Keshav, Advs.

For the Respondent : Mr. Amitabh Chaturvedi and Mr. Ankit Monga, Advs. for R1 and R2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 24.01.2023 in CS no. 58857/2016 in case titled as “*Kamal Mitra Vs. M/s Dunlop India Pvt. Ltd.*” whereby the application filed on behalf of the petitioner/defendant no. 2 under Order XVIII Rule 17 r/w Section 151 of CPC, 1908 for recalling PW3 and PW4 as also for allowing petitioner/defendant no.2 to lead defendant evidence was partly disallowed in respect of recalling of PW3 and PW4.

2. Mr. Vikas Singh, learned senior counsel appearing on behalf of

petitioner and Mr. Amitabh Chaturvedi, learned counsel appearing on behalf of respondent/plaintiff submit that the present petition can be disposed of on consent.

3. In view of the aforesaid consent Mr. Amitabh Chaturvedi, learned counsel appearing on behalf of respondent, on instructions submits that the respondent/plaintiff is willing to voluntarily give up the evidence recorded of PW3 as also the reliance placed upon Ex.PW3/1 through PW3, subject to the fact that the Ex.PW3/1 is already stated to have been produced and exhibited through witness PW4, shall be maintained.

4. Mr. Amitabh Chaturvedi also submits that the certified copy of the Ex.PW3/1 is already placed on record and has been summoned through PW4.

5. Mr. Singh, learned senior counsel submits that since PW4 is only a summoned witness, under provisions of Section 139 of Evidence Act, 1872, petitioner does not wish to cross-examine PW4.

6. Aforesaid statements are taken on record. Parties are bound by the same.

7. In accordance with direction given in the impugned order, in respect of the recording of evidence of the sole witness on behalf of petitioner/DW1, the same shall be conducted on 17.03.2023 on the date already fixed.

8. Petitioner shall ensure the presence of the witness on 17.03.2023. Failure whereof, shall entail automatic vacation of permissions so granted by the learned Trial Court.

9. Learned Trial Court shall ensure that the recording of the evidence of witness on behalf of petitioner/defendant is conducted and

completed on 17.03.2023.

10. The petition alongwith pending applications is disposed of with no orders as to costs.

TUSHAR RAO GEDELA, J

MARCH 14, 2023/AT

